

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NORTH CAROLINA  
3 WESTERN DIVISION  
4

5  
6  
7 UNITED STATES OF AMERICA, )  
8 vs. ) 5:09-CR-216-FL  
9 DANIEL PATRICK BOYD, )  
10 HYSEN SHERIFI, )  
11 ANES SUBASIC, )  
12 ZAKARIYA BOYD, )  
13 DYLAN BOYD, )  
14 MOHAMMAD OMAR ALY HASSAN, )  
15 ZIYAD YAGHI, )  
16 Defendants. )  
17

18  
19 STATUS CONFERENCE  
20 NOVEMBER 16, 2010  
21 BEFORE THE HONORABLE JAMES E. GATES  
22 U. S. MAGISTRATE JUDGE  
23

24 **APPEARANCES:**

25 **FOR THE GOVERNMENT:**

JOHN BOWLER  
BARBARA D. KOCHER  
U.S. ATTORNEY'S OFFICE  
310 NEW BERN AVENUE  
SUITE 800  
RALEIGH, NORTH CAROLINA 27601

**FOR THE DEFENDANTS:****DANIEL PATRICK BOYD:**

DEBRA C. GRAVES,  
ROSEMARY GODWIN  
FEDERAL PUBLIC DEFENDER  
150 FAYETTEVILLE STREET MALL  
RALEIGH, NORTH CAROLINA 27601

**ANES SUBASIC:**

PAUL K. SUN, JR.  
ELLIS & WINTERS  
P. O. BOX 33550  
RALEIGH, NORTH CAROLINA 27636

**DYLAN BOYD:**

JOSEPH E. ZESZOTARSKI, JR.  
POYNER & SPRUILL  
P. O. BOX 10096  
RALEIGH, NORTH CAROLINA 27605

**ZIYAD YAGHI:**

JAMES M. AYERS, II  
AYERS & HAIDT, P.A.  
P. O. BOX 1544  
NEW BERN, NORTH CAROLINA 28563

J. DOUGLAS MCCULLOUGH  
STUBBS & PERDUE, PA  
310 CRAVEN STREET  
NEW BERN, NORTH CAROLINA 28563

COURT REPORTER: REBECCA L. CRUNK  
STENOTYPE WITH COMPUTER AIDED TRANSCRIPTION

**HYSEN SHERIFI:**

MR. ROBERT MCAFEE,  
MCAFEE LAW FIRM  
P. O. BOX 905  
NEW BERN, NC 28563

**ZAKARIYA BOYD:**

MYRON T. HILL, JR.  
BROWNING & HILL  
200 E. FOURTH STREET  
GREENVILLE, NC 27835

**MOHAMMAD OMAR ALY HASSAN**

R. DANIEL BOYCE  
BOYCE & ISLEY, PLLC  
107 FAYETTEVILLE STREET  
SUITE 500  
RALEIGH, NC 27601

\*\*\*\*\*

(The proceedings began at 10:15 a.m.)

THE COURT: Good morning, folks. Madam Clerk, could you please swear the interpreter?

THEREUPON,

BOSNIAN INTERPRETER,

having been duly sworn, interpreted as follows:

THE COURT: Is it functioning properly?

THE CLERK: Yes.

THE COURT: Very good. Well, good morning, again, folks. I want to extend a special welcome to Mr. Paul Sun who is new to the case.

MR. SUN: Thank you, your Honor.

THE COURT: Good to have you here this morning, Mr. Sun. The Court does appreciate your willingness to serve in this matter.

As has been our custom, what I would like to do this morning is begin with a general session with counsel for both sides present, then have a separate session, closed session, with defense counsel and then have a similar session with counsel for the Government.

Let me touch base first with the various liaisons that have been appointed for the Court and see if there are any issues related to the areas in which they are working.

Ms. Graves, any particular concerns with respect to

1 transcripts?

2 MS. GRAVES: No, your Honor. No concerns. We have  
3 provided all of the transcripts that we initially agreed to  
4 provide for the group.

5 THE COURT: Very good. Are there any -- any issues  
6 regarding transcription for counsel as a group?

7 The next deadline coming up with respect to transcription  
8 is the December 1 deadline for the Government's proposed  
9 transcripts of all remaining Government designated audio.

10 Mr. Bowler, is the Government on track? I know last time  
11 you indicated, I believe, the Government was on track. Is that  
12 still the case?

13 MR. BOWLER: The answer would call for somewhat of a  
14 detailed accounting if I could have just a minute on that, your  
15 Honor.

16 THE COURT: Certainly.

17 MR. BOWLER: We've got three FBI agents. We've got one  
18 local FBI agent assigned full time to this. We now have --  
19 we've added two more Arabic linguist. We had something of a  
20 bottleneck. I had two who were working very hard. We needed  
21 more manpower. We brought two more in. We also, U.S. Attorney  
22 through the Department of Justice, distinct from the FBI, we  
23 have a contract with two more court reporters to serve as  
24 transcriptionists so we have a total of 10 personnel working  
25 full time on it.

1       There have been some -- Transperfect entered into this  
2 equation. Our perception is their performance has been  
3 considerably upgraded in terms of quality, and we understand  
4 that has been brought to the Court's attention previously. The  
5 performance analysis, especially on the English portion, is much  
6 better. We have had to return to them, though, in recent weeks  
7 in trying to meet this deadline. I think it was about five  
8 hours of work that needed to be redone by them and has been  
9 redone, but we still have outstanding from Transperfect the  
10 material relevant to this December 1st deadline approximately 30  
11 hours of material which breaks down into approximately 4.4 hours  
12 of priority 1 materials being prioritized in the first and  
13 second priority, and about 26 hours of priority 2 materials.

14       At the pace we're going, we anticipate having all the  
15 priority 1 material finished, and I forgot to add Transperfect  
16 has promised to produce the rest by this Thursday. Candidly,  
17 we're a little skeptical that they're going to be able to make  
18 that, but we'll contact them.

19       THE COURT: So all 30 hours?

20       MR. BOWLER: They'll have back to us. At the moment we  
21 don't have it to do our final processing, but they promised it  
22 by Thursday, and we think they may be a little hopeful on that  
23 estimate, but we should have it soon.

24       We think we're on course to have all the priority 1  
25 completely done and fully half of priority 2 which would leave

1 us about a quarter of the materials we need some extra time as  
2 it relates to Transperfect, the need for additional transcripts  
3 we had to find, and additional personnel that we had to get  
4 funded by the Department of Justice and now are on board.

5 But we anticipate filing today a motion for an extension of  
6 approximately two weeks. One of the co-counsel suggested that  
7 because of all the holidays that we might be better to make that  
8 four weeks until the end of December or until approximately  
9 Christmas time, but at the moment, we are anticipating what we  
10 realistically need is two weeks, and then we have it all done.

11 THE COURT: What volume of material do you anticipate you  
12 need that extension for? How many hours?

13 MR. BOWLER: It would be about a quarter of the 30.

14 THE COURT: A quarter of the 30, so about eight?

15 MR. BOWLER: Yes, approximately, but as Ms. Knowlen (ph),  
16 our person who orchestrated this effort, it's taking -- it's  
17 still taking about seven hours of work to make final for one  
18 hour of these transcripts.

19 THE COURT: Okay.

20 MR. BOWLER: Government always hates to come to the Court  
21 saying we do need some more time, but we think the effort has  
22 been really good faith on everybody's part here, and we think  
23 we'll be substantially complete, but we're going to be moving  
24 for two more weeks to have that final portion.

25 THE COURT: Okay. Well, the Court appreciates the

1 Government marshaling the resources to make its best effort to  
2 meet the deadline.

3 Am I correct, Mr. Bowler, that the Government will produce  
4 all that it has ready by the December 1 deadline even if there's  
5 some additional material that may come after that deadline?

6 MR. BOWLER: Yes, sir. Thank you for asking that. We  
7 think there's really no practical slow down for processes, and  
8 we think the defense will have everything they can swallow by  
9 that set deadline.

10 THE COURT: Okay.

11 MR. BOWLER: It will take them a while to digest all that.

12 THE COURT: Well, to some extent in one sense, at least,  
13 what the Government produces is a springboard for the defense to  
14 get to work and the more time the Government takes it, in a  
15 sense, slows down defense counsel. I realize they have  
16 available the tapes as well and can act on their own, but I know  
17 they have a particular interest in seeing what the Government's  
18 producing. So good. That's a good approach that's being taken.

19 MR. BOWLER: Thank you, sir.

20 THE COURT: And I note that the -- there's the Government's  
21 deadline on December 1 and then the next transcription deadline  
22 is one for defendants at end of January, January 31st, for  
23 defense objections or consent to the Government's proposed  
24 changes to the Government designated existing transcripts, that  
25 first group of transcripts.

1 Any sense at this point that there's going to be any  
2 problem on the defense side in meeting that deadline? I know  
3 it's a ways off.

4 Well, good. I see no defense counsel raising to state that  
5 there is a problem, so that's good.

6 Mr. McAfee, any issues regarding computer issues?

7 MR. McAFEE: No, your Honor. Counsel doesn't have any  
8 issues at this point.

9 THE COURT: Very good. I assume counsel share in that?

10 ALL COUNSEL: (No response.)

11 THE COURT: Very good. Mr. Bowler, I assume there are no  
12 issues on computer hard drives on the Government's side, but  
13 I'll inquire nonetheless.

14 MR. BOWLER: No, sir.

15 THE COURT: Thank you, sir.

16 Mr. Hill, I know that the paper discovery has been silent  
17 as far as any problems for a long time. Nothing's surfaced, has  
18 it?

19 MR. HILL: No, your Honor.

20 THE COURT: Good. Very good.

21 Mr. McCullough, that takes us to international depositions.

22 MR. McCULLOUGH: Yes, your Honor. As you're aware, I  
23 traveled to Amman, Jordan this past week, and I believe I took a  
24 deposition, and it's my contention it's a valid deposition. The  
25 Government did not participate, and I'll be filing a motion



1 to -- with the Court to explain why I believe the deposition I  
2 took was admissible for their lack of participation is, in fact,  
3 a waiver due to Rule 15. As you know, I had the motion pending  
4 before the Court to compel them to attend by telephone. The  
5 Notice -- they filed a Notice updating you with the  
6 conversations that took place --

7 THE COURT: Yes.

8 MR. McCULLOUGH: -- and everything. The date and time was  
9 never changed. They didn't go to court to change the time, and  
10 we never addressed the motion of whether they should be  
11 compelled to attend by telephone. They just said it was too  
12 inconvenient for them to make travel arrangements, and they did  
13 not want to participate by telephone so my reading of the rule  
14 is them not having gone to court to have it changed, the  
15 statement I took is a valid deposition, but I'll refrain from, I  
16 think, further discussion about that because it will be the  
17 subject of the motion once I have the transcript.

18 THE COURT: And I know the Government's view of events  
19 is -- are different based on the competency hearing with respect  
20 to that motion. I'm not trying to reargue that motion. I was  
21 interested in the status of that particular overseas excursion.

22 Mr. Bowler.

23 MR. BOWLER: Our position is Mr. McCullough set an  
24 artificial deadline that he wanted for his own purposes. We  
25 tried every way we could to alert Mr. McCullough that we didn't

1 have any control over this, and we weren't allowed because of  
2 diplomatic protocol in a foreign country to proceed any  
3 differently than we were. Our suspicion is Mr. McCullough  
4 thought that the Kingdom of Jordan was going to deny permission  
5 for this deposition, which as we explained to the Court, we  
6 would not be able to participate anyway, that he would go ahead  
7 and do his interview and try to effect a deposition. It's his  
8 role as an advocate.

9 We made clear all along that we couldn't participate if  
10 permission weren't granted. Contrary to what we thought was  
11 going to happen, they would get an informal statement to us on  
12 or about the 10th that they thought they might get it approved.  
13 It wasn't formal. We couldn't act upon it until it's formal.

14 And then we immediately sent an email to Mr. McCullough,  
15 called his office, called his cell phone. We eventually got his  
16 secretary to call and catch him at the airport where he and his  
17 wife are preparing to depart for Jordan. We explained exactly  
18 what had happened and essentially projected the problem that we  
19 couldn't move until we had a formal approval by the Kingdom of  
20 Jordan, so he was going to get stuck over there without us being  
21 there, and we made very clear we were not going to waive our  
22 physical presence.

23 He was very open with myself and indicated essentially he  
24 would go do the interview and if he had to come back, he had to  
25 come back. And in fact, they did get formal approval. There's

1 a long chain of emails that followed while he was over there in  
2 which we made our position crystal clear we didn't approve that.  
3 After the formal approval came in, we were told, as  
4 Mr. McCullough also told me in an e-mail once he got there or  
5 shortly before he was leaving, that there were Jordanian  
6 holidays over there which wouldn't permit the embassy to  
7 participate in this until that -- and the holiday season  
8 schedule. We were instructed, not offered a choice, but  
9 instructed this could not be scheduled until after Thanksgiving.

10 After somewhat series of exchanges between Mr. McCullough  
11 and the Government, he seemed to have accepted this and he said  
12 if he had to come back, it was all right. We learned this  
13 morning that his position has changed on that. We can show the  
14 Court those emails if the Court finds them pertinent, but we  
15 have not waived our physical presence. We've done everything,  
16 apprised him of every development along the way and, frankly, we  
17 think Mr. McCullough is baldly gaming the system to try to get  
18 an interview in in the form of to call it a deposition.

19 The original deadlines for foreign depositions were not  
20 until the end of January. He set a date for reasons best known  
21 unto himself for recent weeks and has just tried to essentially  
22 jam it down the Government's throat when we had no ability to  
23 meet his deadline because of our own protocols and whatnot and  
24 which we made clear to him and candidly we thought he understood  
25 and agreed to that, and this morning we learned that he had

1 changed his mind. That'll be the substance of our response to  
2 his motion.

3 THE COURT: Okay. Well, I guess I'll wait the filing of  
4 that motion.

5 Are there any other issues, Mr. McCullough, regarding  
6 international depositions that you're aware of?

7 MR. McCULLOUGH: No, your Honor. None of the other counsel  
8 have indicated to me that they have any desire to take any other  
9 foreign depositions, and so I'm not aware of any. And based on  
10 not only did I go to take depositions while I was there, I did  
11 conduct some interviews. The persons that I interviewed were  
12 voluntary witnesses who would be willing to come to the United  
13 States in at least one instance.

14 In the other instance, I don't believe that his testimony  
15 would be as essential as the one that I did interview.  
16 Therefore, I don't think he would qualify for a foreign  
17 deposition under Rule 15. If he shows up as a witness, it has  
18 to be I think his testimony would be admissible, but there's  
19 that extra threshold of Rule 15 depositions of how essential it  
20 has to be, and I don't think it would amount to that being  
21 admissible, so he's either going to have to travel to the United  
22 States voluntarily or he would not be a witness if his health  
23 doesn't permit it, would be my judgment as his counsel.

24 So the only foreign deposition I know of is the one that we  
25 contend is valid, and we will move the Court to review it

1 because in our view under Rule 15 the date -- once notice has  
2 been given, the party who is uncomfortable with that date has a  
3 burden to go back to court and get the date changed. And if  
4 that had taken place, I would have been able to renew my motion  
5 under Rule 30 of the Rules of Civil Procedure that they be  
6 directed to participate by telephone.

7 Now, perhaps after I got my phone call from Mr. Bowler, I  
8 should have tried to reopen our telephonic theory, that might  
9 have been failed on my part. I tried to be as transparent with  
10 the Government and get them to voluntarily participate by phone,  
11 which they were unwilling to do.

12 After I got back and had access to the rules, I realized  
13 the rules put the burden on them to not just send a notice and  
14 tell the Court about the difficulties they had and how  
15 inconvenient it would be and how it was impossible to do in time  
16 to actually file something. The problem I have as an advocate  
17 with Mr. Yaghi is that the rules seem to permit that deposition  
18 to stand, then I have a duty to go forward and try and get it  
19 admitted as it is.

20 THE COURT: Okay. I understand.

21 MR. McCULLOUGH: If it's not admissible then we might have  
22 to redo it. If Mr. Bowler is correct, we may have to go back.

23 THE COURT: Very good, sir. I'll review your motion  
24 assuming it's assigned to me when it's filed. Just to check  
25 with other counsel, no other issues regarding international

1 depositions at this time on behalf of any other counsel?

2 ALL COUNSEL: (No response.)

3 THE COURT: Very good. I think that the experience we've  
4 had here with this particular deposition is a cautionary tale to  
5 other counsel if they, down the road, come to believe that they  
6 need an international deposition, there are unique uncertainties  
7 associated with them as we've seen that counsel pursuing  
8 expeditiously so as to minimize the uncertainties or to  
9 adequately address the uncertainties that are associated with  
10 them.

11 While we're talking about these international depositions,  
12 the issues come up in connection with them, and I might as well  
13 mention this just generally, and that is on motions to seal, the  
14 law really does require that there be a memorandum in support of  
15 a motion to seal. I realize a lot of these motions to seal  
16 address the same issues. If there's a memorandum that's already  
17 been filed that provides legal support for the motion to seal,  
18 it's fine with me, certainly, if it truly is applicable to  
19 simply reference that memorandum.

20 Of course, we all have word processors. It's not that big  
21 a problem or inconvenience, I wouldn't think, just to print off  
22 another copy of it, make conforming changes and submit it, but  
23 the Court's in a position, unfortunately or not, of having to  
24 deny motions to seal that are unsupported by a memorandum. The  
25 law really requires that there be a showing that they're valid,

1 and so if they are filed without a memorandum or incorporated by  
2 reference one that gives clearly applicable, they'll be denied  
3 but just a heads up to counsel.

4 Mr. Bowler, before we get off the issue of the  
5 international depositions, you indicated that the Kingdom of  
6 Jordan has given formal approval at this point, and I realize  
7 it's Mr. McCullough's view that the ship has sailed and the  
8 deposition has been taken, but if there is an update in that  
9 regard, I think it would be helpful to have that reflected in  
10 the court file. I think the last update indicated that the  
11 Government graciously filed was that there was an informal --  
12 the informal approval that you had indicated.

13 MR. BOWLER: Later that week I think it's termed in non  
14 objection law. With the Court's permission, we'll run through  
15 that whole scenario in response to Mr. McCullough's motion.

16 THE COURT: That would be fine. That would be fine. Thank  
17 you.

18 Very good. The next the next deadline dealing with  
19 discovery generally is the motions deadline with respect to  
20 general SBU discovery evidence at the end of January. I believe  
21 that applies to all the parties. It's deadline number 7 on the  
22 chart we're using, just remind counsel of that.

23 Let me also remind counsel with respect to the MOUs, the  
24 memorandum of understanding, regarding SBU material, these are  
25 provided for in the protective order and the amendment to it,

1 that is docket entry 188 and docket entry 202 relating to SBU  
2 material, if I could just remind counsel, please do make sure  
3 that those memorandum of understanding are signed and filed with  
4 the court. They do need to be filed in accordance with that  
5 order and that should be done timely.

6 Mr. Boyce, I think you're the liaison for any issues other  
7 than those specific topics. Is there anything in your bailiwick  
8 to report on?

9 MR. BOYCE: Happy to report we have nothing to report.

10 THE COURT: Okay. Very good. Is there anybody else who  
11 appears to address in the general session, any other issues that  
12 they're concerned about, problems they see down the road,  
13 trouble meeting any upcoming deadlines, anything at all?

14 MR. HILL: Your Honor, I've got an issue, but I need to  
15 bring it up ex parte.

16 THE COURT: Yes, sir. That'd be fine.

17 Let me address the issue of our next conference. If we  
18 were to stay at eight weeks, I think that puts us a couple days  
19 after Christmas which obviously isn't satisfactory. I would --  
20 I would suggest the possibility just to get over the holiday  
21 season of scheduling our next conference for the week of January  
22 10th. Is that too far off? We do have some deadlines. Well,  
23 we have the one deadline, the Government's production deadline,  
24 then on the transcripts if the extension were allowed for that  
25 two weeks then that would also be after any extension of that



1 deadline. How does that strike counsel, the week of January  
2 10th?

3 Mr. Bowler, is that satisfactory?

4 MR. BOWLER: That's fine with the Government.

5 THE COURT: Is that inconvenient for any counsel?

6 MR. HILL: No, your Honor.

7 MR. SUN: No, your Honor.

8 THE COURT: Very good. Why don't we set it, let's see  
9 here, we seem to be doing these conferences on Tuesdays. How  
10 about Tuesday, January 11th at 10 a.m.? Very good. We'll set  
11 the next conference for that date, and we'll, of course, give  
12 formal notice of the location and order following this  
13 conference today. With that said, why don't we go into closed  
14 session with the defendants. Mr. Bowler and Ms. Kocher, will we  
15 be able to reach you at your offices?

16 MR. BOWLER: Yes. I'll write those numbers down.

17 THE COURT: Okay. Very good. Well, let's then -- we'll  
18 take a brief recess while the courtroom is closed so we can go  
19 into closed session with the defendants.

20 (Recess taken from 10:42 to 10:48.)

21 THE COURT: Very good. Well, it appears as though the  
22 courtroom has been cleared of all persons except for court  
23 personnel and counsel for the defendants. Mr. Subasic, of  
24 course, is here as well today.

25 Let me run down the list again regarding the different

1 areas of discovery. Are there any particular issues regarding  
2 transcripts that defense counsel would like to discuss on an ex  
3 parte basis?

4 MR. HILL: I need to do that individually, your Honor.

5 THE COURT: Okay. That's fine, Mr. Hill, we'll do that.  
6 Of course, all of you have the opportunity to meet with me  
7 individually. I do want to -- I'll meet individually with  
8 Mr. Hill. I do want to meet individually with Mr. Sun and Mr.  
9 Wiles as well. I know that, but that's certainly a privilege  
10 any counsel may take advantage of it. Sounds as if the quality  
11 issues that have been concerned with Transperfect are  
12 straightening themselves out which was the expectation and hope.  
13 Is that everybody's experience? Good.

14 Any issues with respect to computer regard hard drives.  
15 Mr. McAfee, any?

16 MR. McAFEE: No. I got a copy. The Government's ready to  
17 deal with it.

18 THE COURT: Okay. And folks are generally satisfied with  
19 the experts that they're using and their work is continuing at  
20 pace? I assume there are no issues for ex parte discussion  
21 regarding paper discovery, Mr. Hill?

22 MR. HILL: No, your Honor.

23 THE COURT: Okay. Very good. Any ex parte issues  
24 regarding international depositions?

25 MR. BOYCE: Your Honor, I would advise the Court we are

1 looking at alternative methods. We are still in that process,  
2 and I should know by the end of this month hopefully if we will  
3 be requesting any overseas depositions, but we have been using  
4 alternative methods of gathering information.

5 THE COURT: I see. Okay. Thank you, Mr. Boyce.

6 Are there any motions for defense experts that are  
7 anticipated? And I know there is one that the Court is  
8 expecting and that is a motion by -- a motion for the additional  
9 transcripts, additional transcription. That's pursuant to Judge  
10 Flanagan's September 22nd order docket entry 588.

11 MR. McAFEE: Judge, that's the one with the \$2,400 --

12 THE COURT: Yes.

13 MR. McAFEE: -- working unit.

14 THE COURT: Yes. And it requests -- there was a directive  
15 in there, I'm sure you're all familiar with it, but it was a  
16 directive that a budget, a collective budget be filed for  
17 funding in excess of the statutory maximum and that that motion  
18 be filed as soon as practical. That motion, I believe, requires  
19 authorization from the Chief Judge of the 4th circuit, so to get  
20 it up to Judge Traxler and all to get it on his schedule may  
21 take a bit longer, and the Court is concerned that that process  
22 not slow you down in your work with the transcripts received.  
23 If you haven't focused on that yet, and I'm not saying that you  
24 haven't, but to the extent that you can, I would request that  
25 you make that a priority so that that doesn't become an obstacle

1 in preparation for the trial.

2 Are there any other issues regarding motions for experts or  
3 services of any kind that anybody's aware of?

4 MR. ZESZOTARSKI: Your Honor, there might be a trial expert  
5 witness in terms of testifying in this case and the public  
6 defender's office is sharing one. We're not there yet, but  
7 we're working on it.

8 THE COURT: Okay. Well, good. I'm glad you're working on  
9 it. I would ask that the liaisons -- and I'm sure you already  
10 have, I imagine Mr. Wiles and Mr. Sun have reached out to you  
11 already but just any assistance you can provide consistent with  
12 your obligations to your own clients to help Mr. Sun get fully  
13 up to speed to the extent he's not already, the Court would very  
14 much appreciate that.

15 Are there any other issues to be discussed as a group here?  
16 I do want to go over these individually with you, and obviously  
17 some of this we talked about will be ex parte, but are there any  
18 other issues for defense counsel as a group for us to discuss  
19 this morning?

20 ALL COUNSEL: (No response.)

21 THE COURT: Very good. Okay. Well, why don't we then --  
22 if I could just touch base with each of you, and I will reserve  
23 time obviously to meet separately with a number of you.

24 Ms. Graves, Ms. Godwin, could you just update me on the  
25 topics as listed in the order for the status conference, the

1 typical topics? Is everything going on pace with respect to  
2 review of the paper discovery?

3 MS. GODWIN: Yes, your Honor. We completed the paper  
4 discovery and are actually reviewing it again so we've saturated  
5 that pretty well.

6 THE COURT: Very good.

7 MS. GODWIN: Audio and video, we are reviewing that as we  
8 go back through the discovery, putting it all together, and  
9 we're making excellent progress on that and sharing with the  
10 client.

11 THE COURT: Oh, good.

12 MS. GODWIN: The computer hard drives, we have our expert  
13 in place, and we're working our way through that as well.

14 THE COURT: And that seems to be going at a sufficient  
15 pace. It's right on schedule.

16 MS. GODWIN: Yes, sir.

17 THE COURT: Very good.

18 MS. GODWIN: Regarding foreign depositions, that's a matter  
19 that we are continuing to explore through other -- trying to get  
20 that information through other means and will certainly be  
21 cooperating with the other court appointed lawyers, and if it  
22 becomes necessary for us to take foreign depositions.

23 We're on track. We do have a plan for timely completion of  
24 trial.

25 THE COURT: Good.

1 MR. GODWIN: And we're satisfied we're making progress as  
2 we had planned, and we don't have any other with technology at  
3 this time, and we don't have any other matters.

4 THE COURT: Very good. Thank you. Mr. McAfee, sir.

5 MR. McAFEE: Judge, as all the paper discovery has been  
6 done, but we are just shy of halfway through the audio video  
7 discovery.

8 THE COURT: Right.

9 MR. McAFEE: And in the last week in November, depending on  
10 the trial venue in State court, there's not going to be any  
11 depositions overseas. I have two witnesses who will be  
12 voluntary witnesses, if anything. Another person who is a  
13 family member of my client, I have the report he's been arrested  
14 for a state crime there so I don't think I'm going to be taking  
15 his deposition.

16 We're following the plan as about the things -- the  
17 budgetary concerns. December was slow, but in November and  
18 going from October and November are going on a regular basis. I  
19 would note that the public defender's office got an offer to  
20 extend the offer from the software called Case Mammal and the  
21 time, which I actually took them up on their offer, it's sort of  
22 a case management tool. I don't know if it's going to be  
23 something that's going to take the place of the trial record  
24 that has all the bells and whistles, but it's a very useful  
25 piece of software in a case like this where you have multiple

1 kinds of discovery together.

2 I was offered it at a great reduced rate and turned it to  
3 be pretty good. I haven't put it in place yet.

4 THE COURT: Well, good.

5 MR. McAFEE: I'm learning that the Court didn't even have  
6 to provide it for us, but it is useful in with the other  
7 matters. There are no other issues at this time.

8 THE COURT: Okay. Very good. Let me ask you about  
9 September. I know there were budgeting issues that you talked  
10 about before, and I don't necessarily want to discuss them  
11 openly here unless you're comfortable doing that, and you were  
12 waiting for approvals from the Court for certain --

13 MR. McAFEE: The attorney's fee and the legal assistant  
14 budget has now been approved.

15 THE COURT: And are you planning on submitting a CJ  
16 advancement for September?

17 MR. McAFEE: No. The entries I had for September were just  
18 for me, and they were on my October ledger.

19 THE COURT: I see. Okay. Very good. Thank you.

20 Mr. Hill, sir, I guess you want to meet privately, correct?

21 MR. HILL: I can address in general everything but one  
22 topic. I've been through all the hard paper discovery and I've  
23 been through it with my client. Computer wise, Joe and I are  
24 sharing a computer expert, and we're up to speed. He's doing  
25 what he's doing, and we're very satisfied with his services.

1 Depositions, as Rosemary said, will be a package deal. We're  
2 working on that. Audio transcript is what I need to discuss  
3 with you ex parte, and I have a plan to get it done.

4 THE COURT: Okay. Mr. Zeszotarski, sir.

5 MR. ZESZOTARSKI: Your Honor, the majority of my time right  
6 now, as you can see from the vouchers, are being spent mainly on  
7 the audio and video side of things and in linking that together  
8 with the paper which I think is what a lot of us are doing right  
9 now. And I feel like I'm making very good progress on that.  
10 It's hard for me to gauge exactly how far along I am because I'm  
11 kind of doing it in order of significance to my client rather  
12 than regular order.

13 That being said, I think that I'm on schedule, and I'm  
14 confident that I'm in a good position to be ready for trial.

15 THE COURT: Is there -- is there a motion that you're going  
16 to file with respect to paralegal fees? Am I recalling that  
17 correctly?

18 MR. ZESZOTARSKI: I've already filed a motion and gotten  
19 approval for paralegal.

20 THE COURT: Okay.

21 MR. ZESZOTARSKI: I just haven't submitted a voucher, yet.

22 THE COURT: Okay.

23 MR. ZESZOTARSKI: That's been an from an internal issue I'm  
24 having to work through. I'm sort of an island unto myself over  
25 there.



1 THE COURT: Well, good luck with that.

2 MR. ZESZOTARSKI: Yeah. Thank you.

3 THE COURT: Yes, sir. Mr. Boyce.

4 MR. BOYCE: Yes, sir. We have indexed the sensitive and  
5 unclassified paper. We have indexed the audio and video  
6 unclassified and sensitive. We have preliminarily reviewed all  
7 the computers and don't really see a need to index that, but  
8 we've reviewed that. Obviously, we don't have any classified  
9 materials of any relevance. We still, on the record, want to  
10 express our concern regarding the deadline for overseas  
11 depositions and not having the general materials and classified  
12 materials in time to schedule any depositions that still may be  
13 problematic, so we may be making emergency motions or having to  
14 deal with that sometime in 2011.

15 THE COURT: So you're satisfied with your preparation in  
16 all these various areas. I know you elaborated on this in some  
17 detail in the past with the chart and so forth, but you're  
18 satisfied that your preparation is on track.

19 MR. BOYCE: If Judge Flanagan wants to reconsider my  
20 motion, we'll be ready any time she wants.

21 THE COURT: Okay. Very good. Mr. McCullough.

22 MR. McCULLOUGH: I second his motion on that since I also  
23 had our motion to sever denied this past week. It was  
24 anticipated, I know that, but nonetheless, both Mr. Boyce and I  
25 find ourselves in a relatively unique situation in regard to

1 transcripts and that type of thing is there's very little that  
2 pertains to us at all, and so we have reviewed it because the  
3 material might have an impact on our defendant just by the  
4 cumulative effect of what's being discussed and that type of  
5 thing, but it really isn't anything that we can make a motion  
6 about because our people are not on it, therefore, we're not  
7 aggrieved parties so we're just kind of monitoring, and we have  
8 and my client has very diligently read virtually everything in  
9 the case that's been reduced to paper or where he could review  
10 it on the computer based on the protective order that we had in  
11 place where you could leave the computer at the jail, and he did  
12 have access to the disk and that type of thing, and that's been  
13 very helpful because he's very curious, as I'm sure all the  
14 defendants are, about the quality of the case involving him.

15       This past week was very productive from our standpoint.  
16 Regardless of whether we have to go back and do it again or  
17 whether we -- you know, after we've briefed it whether this  
18 particular deposition stands, those parties would have an  
19 opportunity to brief that issue, and it's predetermined, but  
20 nonetheless it was a very productive week because I interviewed  
21 other witnesses unless I wouldn't have gone, I just couldn't  
22 have known the detail that they could provide and the  
23 background.

24       I apologize for not having included a memorandum of law  
25 regarding the sealing motion but on the last round of materials,

1 we'll be able to address that. I think because we had addressed  
2 it early on, it just got to be pro forma and set by, and we'll  
3 address that and incorporate it for the reasons stated in  
4 previous motions. This relates to the same subject matter,  
5 therefore, we'll come up with a short statement that satisfies  
6 that requirement.

7 THE COURT: That'll be fine. The Court's not trying to  
8 make busy work for anybody.

9 MR. McCULLOUGH: It's just one of those things that came  
10 out of the processor. Maybe we should have been put a little  
11 more meat on the bone.

12 THE COURT: Okay. Well, I appreciate it then.

13 MR. McCULLOUGH: The only other issue that I would have,  
14 and it's just there's no answer to it right now, and so I don't  
15 know what -- but I don't -- I don't have any idea as to how the  
16 election is going to come out. November 29th --

17 THE COURT: I was going to ask you about that.

18 MR. McCULLOUGH: November 29th they start counting votes.  
19 I am at this point about 90 something thousand votes behind, but  
20 there's about 1.7 million votes that have to be counted two  
21 times statewide to see how many number twos and number three  
22 until leading contenders pick up, and there's about 575,000  
23 Republican votes there who these are people who voted number one  
24 for a different Republican other than myself so even though it's  
25 bipartisan election, it goes backwards into it, and nobody knows

1 how the runoff process is going to be. I would say that if I  
2 was elected, and I would have to move to withdraw, the counsel  
3 that would come behind me would be in no worse position than  
4 Mr. Sun is and probably better because my client has less direct  
5 evidence involving him than Mr. Sun's client has so we would  
6 work to make the transition as smooth as possible.

7 THE COURT: So are there any firm dates set?

8 MR. McCULLOUGH: I think they're going to start counting  
9 the votes November 29th and have an answer by that week.

10 THE COURT: And that then subsequent after that then you'll  
11 identify the leading two, correct?

12 MR. McCULLOUGH: Well, we're already identified, yes, sir.  
13 The two leading contenders and everybody else is now out of it  
14 so what they do process wise is on November 29th the counselors  
15 of election will start hand counting the losers ballots for  
16 their number two and number three selections and see how many of  
17 those votes were for one of the two leading contenders and post  
18 those numbers, just a vote for us, one or the other votes, and  
19 at the end of that process the person who has the most overall  
20 votes would be the winner of that election.

21 THE COURT: I see. So --

22 MR. McCULLOUGH: They would first go through all the number  
23 twos, then they would add every one for Mr. Thigpin and every  
24 one for myself for our vote totals. If either one of us has  
25 less than 50 percent election vote -- but since he only has 20

1 percent and I only have 15 percent, it's very unlikely that  
2 counted twos would be enough to get anybody there. So then they  
3 would count the threes and how many ever selected one or the  
4 other of us as their third choice would then be added to our  
5 totals, and he who has the most votes then wins. And there's  
6 almost no way we can tell.

7 All I know is right now I'm 97,000 votes behind, and I'm  
8 planning on practicing law, but it may be that there's enough  
9 votes there for me to be the winner. Some people seem to think  
10 I have an excellent chance because of all the high number of  
11 Republican votes that are in there, that I have a good chance of  
12 votes out of that group that he has from the other candidates so  
13 we have to wait and see.

14 THE COURT: So we should know some definitive by the end of  
15 the month.

16 MR. McCULLOUGH: By the end of the month, yes, sir, and  
17 maybe then we'll see.

18 THE COURT: I understand, but in the meantime all is well  
19 as far as your case prep.

20 MR. McCULLOUGH: All is well as far as our case preparation  
21 goes, and I would tell the Court that the amount that I budgeted  
22 for this trip was just about to the penny. The court order was  
23 for \$3,750 and the air fare was, like, 1,200 and something, the  
24 hotel bill was 1,200 and something and the per diem was, like,  
25 900 and something so it comes out, like, 3,600 and some odd

1 dollars by the time you see what our voucher would be so that  
2 prediction is what it would be now.

3 If we have to redo it, and they want to send two attorneys,  
4 it's going to be about \$10,000 or thereabouts for us to redo it  
5 and that's not the -- the defendant because I think there's  
6 enough room in the budget, my legal budget and theirs, for us to  
7 redo it if necessary, but I'm certainly going to press for --  
8 you know, for my client to have this be done.

9 THE COURT: I see. Okay. I understand. I understand.  
10 Very good. Mr. Boyce, let me add, I believe that your paralegal  
11 budget that you submitted was approved by the 4th Circuit  
12 yesterday so that approval ought to be reflected in an order  
13 from this court pretty soon.

14 MR. BOYCE: Thank you, Judge.

15 THE COURT: Yes, sir. Mr. Sun, is there anything that -- I  
16 am interested in knowing the status of case preparation  
17 generally. I do want to meet with you and Mr. Wiles separately  
18 to talk about the transition, but we can defer any discussion of  
19 the status of your case until then if you care to.

20 MR. SUN: That would be fine with us, your Honor.

21 THE COURT: Okay. Very good. Very good. Well, I think  
22 that takes us through the agenda for the meeting with the  
23 defendants as a group. I would suggest now that I meet with  
24 Mr. Sun and Mr. Wiles and Mr. Subasic separately and I know,  
25 Mr. Hill, if you could just be on standby, I don't anticipate

1 taking too much time. How might we reach you? Will you just be  
2 in the lobby, sir?

3 MR. HILL: I'll be in the lobby or classified room.

4 THE COURT: Okay. Very good. We'll track you down. Let's  
5 clear this courtroom except for the counsel for Mr. Subasic and  
6 Mr. Subasic. We'll be in a brief recess.

7 (Recess taken from 11:12 to 11:17.)

8 THE COURT: We're now in closed session with counsel for  
9 Mr. Subasic. Mr. Subasic himself is present as well.

10 Gentlemen, I just -- I wanted to touch base with you partly to  
11 just check in on the overall status of the case preparation and  
12 also to discuss with you, really just check in with you about  
13 the transition process that you're in the midst of right now.

14 Why don't we start out with just a check on the status of  
15 the case preparation generally, and I'll be happy to hear from  
16 either you, Mr. Sun or Mr. Wiles.

17 MR. WILES: Let me just give a brief update of what I've  
18 done since our last status conference.

19 THE COURT: Okay. Very good.

20 MR. WILES: I kind of put things on a sort of -- sort of  
21 kind of hold in terms of my preparation because I anticipate  
22 what the Court ultimately did and didn't want to run into new  
23 counsel's budget unnecessarily, but I did continue working on  
24 reviewing audio and video surveillances, and I finished all the  
25 audio and prioritized and began working on Mr. Subasic materials

1 and keeping notes so that they could be handed off to new  
2 counsel if that's what came about.

3       There's not been any further work on my part on the  
4 computer materials or on the paper discovery. I have compiled  
5 my notes on the prioritized audios into a spreadsheet that's  
6 arranged chronologically that's been provided to new counsel,  
7 and we were able to copy all of the -- our case files that are  
8 in digital format to CD ROMs and flash drives to provide to  
9 Mr. Sun, so I just got those are up and running.

10       So I've made myself available to him in every way I can,  
11 and he's been really good. He clearly knows what he's doing.  
12 He's got great questions so I'm satisfied what he's doing toward  
13 transition.

14       The Court's order to refer to a written transition plan,  
15 I've never done one so I don't know exactly what to do, but what  
16 I have done is I started the day or the day after your order  
17 came out, and I prepared a memo outlining and describing  
18 everything that I had in the file and how I was going to be  
19 providing it to him, and we've been working on that.

20       THE COURT: Good.

21       MR. WILES: I think we're pretty much complete on that  
22 memo.

23       THE COURT: And that was the Court's concern. I didn't  
24 want see a transition plan. I just -- I anticipated this would  
25 happen anyway but just to make sure some real thought went into



1 the most efficient way to pass off the case because it is a  
2 large case. It's complicated and I think to do it efficiency  
3 would require some thought by you and, not surprisingly, you  
4 have given it.

5 MR. WILES: That's all I have to say, your Honor, unless  
6 you have further questions of me.

7 THE COURT: Not necessarily. I was interested in -- your  
8 comments are very helpful. I was interested in if I know -- if  
9 you continue to believe collectively that your case remains on  
10 pace to be ready to meet the series of deadlines that are  
11 upcoming and ultimately be ready for trial in the current dates  
12 set by the Court.

13 MR. WILES: I felt that way at the last status conference,  
14 and I did, as we moved through this most recent process, I -- I  
15 feel we've moved through the track.

16 THE COURT: Okay. Very good. Mr. Sun.

17 MR. SUN: May it please the Court, I just wanted to echo  
18 and tell the Court, as I told Mr. Wiles, we were able to  
19 actually upload, if that's the right term, right to a program  
20 that we use all the material that is in his file electronically  
21 so it did switch over seamlessly, and I've been pleased in my  
22 ability to work through this.

23 I don't have the substantive knowledge, but I'm able to  
24 appreciate the organization and the content in a general sense  
25 to see what's there, and I can confirm to the Court that I feel

1 confident in that regard about being able to quickly grasp that  
2 because of the work that's going into the case up to this point  
3 and again, the ability, literally, to pick it up, if you will,  
4 and move it from one law firm to another electronically in a way  
5 that, frankly, it's amazing, I guess, but it works great.

6 And so I do feel confident. It's easier, I guess, for me  
7 to look at some back end deadlines and think about those from  
8 earlier deadlines and get precisely what would be involved with,  
9 you know, the January 31st deadlines.

10 THE COURT: Right.

11 MR. SUN: I haven't reviewed the discovery enough to know  
12 whether -- I haven't talked to my client about that. I  
13 certainly know that Mr. Wiles has had that process going on, but  
14 I can't honestly say to the Court that I've engaged in that to  
15 an ability at this point, but nothing that's happened so far has  
16 lead me to think that that won't be the case.

17 Mr. Wiles and I have met twice already, and he's great at  
18 responding to e-mail so I'm confident we'll be able to make that  
19 transition as soon as possible.

20 THE COURT: Good. That's excellent. And I believe,  
21 Mr. Sun, you entered your appearance on November 5 which I think  
22 would put the end of the 60-day transition period, if I  
23 calculated correctly, January 4. Is that your understanding as  
24 well?

25 MR. SUN: Yes.

1 THE COURT: Okay.

2 MR. SUN: And I have gone through -- if I can branch out a  
3 little bit from discovery.

4 THE COURT: Certainly.

5 MR. SUN: I did have a meeting with the court security  
6 officer yesterday.

7 THE COURT: Yes.

8 MR. SUN: And I have now filed the memorandum of --

9 THE COURT: We saw that today.

10 MR. SUN: And I'll get the personnel I want to help me with  
11 the case, but we're making the appropriate progress on that as  
12 well.

13 THE COURT: That's excellent. We were gratified to see  
14 that. The court security officer made a particular effort to  
15 make sure that process went quickly. The Court thanks her for  
16 her efforts in that regard. The transition process is subject,  
17 as you know, really to two orders that were entered, one was the  
18 order that I entered. I think both orders are self-explanatory,  
19 but since we're all here, I just wanted to ask if either you,  
20 Mr. Sun, or you, Mr. Wiles, had any questions relating to either  
21 of these orders. My order is docket number 631 making the  
22 substitution of counsel or ordering that that occur and then  
23 Judge Flanagan's order on budgeting type issues was also  
24 entered. That's docket entry 652, I believe.

25 Any questions at all regarding those two orders or any

1 provisions of them?

2 MR. SUN: No, your Honor. Again, to reflect on the  
3 assistance that Mr. Wiles provided, Judge Flanagan's order  
4 referred back to a number of earlier orders that I did not have  
5 access to but Mr. Wiles shot that over to me right away so I  
6 don't have any questions in that regard.

7 THE COURT: Okay. Very good.

8 MR. WILES: I think I'm on track with that, your Honor.

9 THE COURT: Very good. And I'm assuming from your comments  
10 that you don't anticipate that you'll be able to make the  
11 handoff and, Mr. Wiles, you'll be able to file your notice of  
12 withdrawal within this 60-day period, by January 4th.

13 MR. SUN: Yes, sir.

14 THE COURT: Okay. Very good. Mr. Subasic.

15 MR. SUBASIC: Yes, sir.

16 THE COURT: Sir, I wanted to just make a couple of comments  
17 to you, sir. As you know you do have new counsel in the case,  
18 and I urge you to make your best efforts to work cooperatively  
19 with Mr. Sun. The Court anticipates he'll do an excellent job  
20 representing you. As I think is implicit if not stated  
21 expressly in the Court's order appointing new counsel for you,  
22 the timing of your request and the other circumstances made it  
23 possible for that substitution of counsel to be made and as the  
24 case progresses, it's important to keep in mind that in no case  
25 can counsel be substituted on a repeated basis. It's too

1 disruptive to the case. The case must move forward. It  
2 undermines the orderly administration of the case.

3 So I just -- I don't want to prejudge future circumstances  
4 but just to emphasize the point that I'm confident you're going  
5 to make your best efforts to work with Mr. Sun. I have no doubt  
6 about that, and I just urge you to do so because the  
7 availability of another opportunity to substitute counsel under  
8 the circumstances that may exist in the future, there are  
9 other -- at that point down the road, there are other  
10 considerations that may not make it possible for that to happen.  
11 I just wanted to alert you to that.

12 Very good. Gentlemen, is there anything further that we  
13 could productively discuss today in closed session?

14 MR. SUN: No. Thank you, your Honor.

15 MR. WILES: No. Thank you, your Honor.

16 THE COURT: Mr. Wiles, thank you for your efforts in this  
17 transition process. I certainly appreciate it, sir. And I  
18 believe that concludes the proceedings then involving  
19 Mr. Subasic. So I'll remand him to the custody of the  
20 Department of Corrections, and Madam Interpreter, thank you for  
21 your services. And we'll take a brief recess and if we can  
22 round up Mr. Hill for a private session.

23 (Recess taken from 11:29 to 11:30.)

24 THE COURT: Mr. Hill, the floor is yours.

25 MR. HILL: A quick summary, as you know, I'm a sole

1 practitioner down in Greenville and I've been that way my whole  
2 life and I've never had help. I do my own research, my own  
3 everything and when I got in this case and started moving along,  
4 I realized I needed paralegal help. I made the necessary motion  
5 and it was approved for, I think, \$20,000 the first time around,  
6 and now I've got 50,000 I believe is where I'm at.

7 I've hired a litigation expert in the case, Lynette  
8 Norphilly (ph), in June, July and August. I think she worked  
9 about 560 hours a month. She did 40 hours a week, did a  
10 fabulous job and got me through all the videos. Now it's  
11 reduced down to my client. I think we spent three hours on all  
12 the evidence on video and so she reduced all that down to three  
13 hours, did a wonderful job.

14 When she took the job September 1st with the public  
15 defender, she knew another lady, Ms. Webb, who is a litigation  
16 expert, she thought she would be wonderful for the job. I've  
17 hired her. I've had some secretary problems myself when my  
18 secretary retired after 17 years and two jury trials this month  
19 so I sort of thought she was doing her thing, and I found out  
20 she billed out 15 hours last month. I got a letter from the  
21 judge, you may have seen it, because she had she had three and a  
22 half hour drive from Chapel Hill to Greenville from two hours  
23 and the mileage was 336 and it was 200. So I've got some  
24 problems with her and I am behind in the other transcripts. I  
25 see here today that there's 10 people working on the

1 Government's side of it, and I don't have anybody up to speed.

2 I talked to my computer expert, Camden, Camden is a new  
3 graduate, very sharp, in Greenville. He's literally a quarter  
4 mile from my office. He's got a stack of 10 or 20 people. He  
5 can review the audio tapes and can put the key words in and help  
6 me out tremendously in getting -- looking at these transcripts  
7 and whatever and if one person is busy, we've got another person  
8 that can do it. So what I'm asking the Court to do is to allow  
9 me to use my paralegal expense of \$50 an hour to hire my  
10 computer company to help me get through it

11 THE COURT: I see.

12 MR. HILL: And if it gets crunch time, he can put five  
13 people on it, and I just think that's the most efficient. Right  
14 now, I can't find a paralegal there. They're hard to find. The  
15 good ones are working full time.

16 THE COURT: I understand.

17 MR. HILL: But that's all my request is. When I submit my  
18 voucher to submit it, I'll submit -- Silicon Solutions, Inc.  
19 will be the one that I'll split my paralegal time through and  
20 then Camden Stiles (ph) who I'll submit my computer time  
21 through. And I had a long discussion with him because I didn't  
22 sleep well Saturday night so I was at his office Sunday morning  
23 worried about it, and he and I had about a two-hour conversation  
24 and, like I said, he's very sharp, and he's agreed to this.

25 THE COURT: And you're confident that that work can be done

1 satisfactory by his company.

2 MR. HILL: I am. And I believe up to date, I billed  
3 \$28,000. I think I can do that a lot less than the 28. I think  
4 it would be a lot less than that because of his computer skills  
5 and be able to plug key words to pull up, and then I'll have  
6 some funds left over to hire somebody to sit behind me at trial.

7 THE COURT: Okay.

8 MR. HILL: I don't see any negatives. If I had a negative,  
9 I'd tell you.

10 THE COURT: No. I understand what you're saying. I'm  
11 thinking about the best procedural way to present this. You've  
12 made an oral motion. I'm thinking, Mr. Hill, it might ought to  
13 be put on paper, and it doesn't sound like that would be an  
14 extraordinary effort, and, of course, you've got the record  
15 here, the justification for it. I hate to put you to the extra  
16 trouble, but I think it probably needs to be reflected in a  
17 written motion.

18 MR. HILL: I'll do that, your Honor.

19 THE COURT: So that would enable Judge Flanagan to see that  
20 in writing and help to facilitate the process, but I certainly  
21 understand what you're saying. It sounds like you've been  
22 resourceful in trying to find a solution and getting resources.

23 MR. HILL: I don't sleep at night. I try to get where I  
24 can, and I found out she had billed 15 hours for the whole month  
25 of October.



1 THE COURT: I'm sorry. Okay. Well, my suggestion on that  
2 would be to get a motion in, and I'll certainly pass along the  
3 gist of your comments here today to Judge Flanagan so she can be  
4 on the lookout for that motion.

5 MR. HILL: Very good.

6 THE COURT: Very good. Thank you, sir. Very good. I  
7 think we need to meet with counsel for the Government. Thank  
8 you, Mr. Hill.

9 MR. HILL: Thank you.

10 THE COURT: We're now in a closed session with solely  
11 counsel for the Government and court personnel. Mr. Bowler and  
12 Ms. Kocher, I appreciate your making the effort to come back  
13 downstairs or upstairs depending on where your office is.

14 MR. BOWLER: We're intimidated by your powers, your Honor.

15 THE COURT: Well, I appreciate you mastered the effort to  
16 come. Nevertheless, are there any other issues that counsel for  
17 the Government wishes to bring to the Court's attention  
18 regarding case preparation or any other aspect of this case?

19 MR. BOWLER: This is really -- this could necessarily be ex  
20 partied just to give the Court, Mr. Kelhoffer (ph) is attempting  
21 to collect some authorities in reference to this whole  
22 deposition matter that the Court needs to meet on so we haven't  
23 forgotten about having to supply that to the Court.

24 THE COURT: Very good. I appreciate that very much.

25 MR. BOWLER: Nothing else.

1 THE COURT: And your case preparation, I'm assuming, is on  
2 track.

3 MR. BOWLER: We think so.

4 THE COURT: On current schedule. And we talked about the  
5 one deadline. You don't foresee any other deadlines that you  
6 see a problem with at this point?

7 MR. BOWLER: We don't at this point, your Honor.

8 THE COURT: That's fine. We'll be seeing each other again  
9 in January. Very good. Anything else that you wanted to bring  
10 up at all, Ms. Kocher, Mr. Bowler?

11 MS. KOCHER: No, sir.

12 THE COURT: Very good. Well, I guess that will conclude  
13 our conference. Again, thank you for coming down. Very good.  
14 We'll be in recess.

15 (Proceedings ended at 12:25 p.m.)  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## 1 CERTIFICATE

2 THIS IS TO CERTIFY THAT THE FOREGOING TRANSCRIPT OF  
3 PROCEEDINGS TAKEN AT THE CRIMINAL SESSION OF UNITED STATES  
4 DISTRICT COURT IS A TRUE AND ACCURATE TRANSCRIPTION TO THE BEST  
5 OF MY ABILITY OF THE PROCEEDINGS TAKEN BY ME IN MACHINE  
6 SHORTHAND AND TRANSCRIBED BY COMPUTER UNDER MY SUPERVISION.

7 THIS THE 21ST DAY OF FEBRUARY, 2011.

8  
9 /S/ REBECCA L. CRUNK

10 REBECCA L. CRUNK  
11 COURT REPORTER  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25